

POLICY GA 3.1 CONDUCT OF INVESTIGATIONS CONCERNING PERSONS WITH
SERIOUS MENTAL ILLNESS

- A. PURPOSE: To establish procedures related to investigations conducted by the Regional Behavioral Health Authorities, the Arizona State Hospital and the ADHS/DBHS.
- B. SCOPE: ADHS/Division of Behavioral Health Services (DBHS); the Arizona State Hospital, Regional Behavioral Health Authorities (RBHAs) and their subcontracted providers, Tribal RBHAs (TRBHAs) and their subcontracted providers.
- C. POLICY: Investigations shall be conducted into allegations of physical abuse, sexual abuse, violations of rights, and conditions that are dangerous, illegal, or inhumane. Investigations shall also be conducted in the event of a client death. Investigations conducted pursuant to this policy are only conducted when the person receiving services is enrolled in services for persons with serious mental illness.
- D. REFERENCES: A.R.S. § 41-1092 et seq.
A.R.S. Title 32, Chapter 33
9 A.A.C. 21, Articles 3 and 4
A.A.C. R9-1-107
ADHS/DBHS Policy GA 3.3 *Appeals Process for Persons Receiving Services*
ADHS/DBHS Policy GA 3.5, *Notice Requirements*
ADHS/DBHS Policy GA 3.7, *Reporting and Investigations of Deaths of Persons with Serious Mental Illness*
ADHS/DBHS Policy CO 1.4, *Confidentiality*
ADHS/DBHS Policy QM 2.5, *Reports of Incidents, Accidents and Deaths*
- E. DEFINITIONS:
1. Administrative Appeal – An appeal to the ADHS/DBHS of a decision made by the Arizona State Hospital or a T/RBHA as the result of a grievance.
 2. Appeal – A request for review of an action, and for a person determined to have a serious mental illness, an adverse decision by a T/RBHA or ADHS/DBHS.
 3. Condition Requiring Investigation – An incident or condition that appears to be dangerous, illegal or inhumane, including the death of a person with SMI.

4. Grievance or Request of Investigation – A complaint that is filed by a person with SMI or other concerned person regarding a violation of the person with SMI's rights or a condition requiring investigation.
5. Physical Abuse – The infliction of physical pain, injury, impairment of body function, or disfigurement, of a person receiving services that is caused by acts or omissions of an employee or contracted staff of the Arizona State Hospital or the T/RBHA or subcontracted provider.
6. Preponderance of Evidence – A standard of proof that it is more likely than not that an alleged event occurred.
7. Special Assistance – Assistance provided to a person who has been determined to need additional assistance to fully understand and participate in the individual service plan process, the inpatient treatment and discharge plan, the appeal process or the grievance/request for investigation process.
8. Sexual Abuse – Sexual misconduct caused by acts or omissions of an employee or contracted staff of the Arizona State Hospital or the T/RBHA or subcontracted provider. Sexual abuse includes molestation, sexual assault, incest, or prostitution of, or with, a person receiving services.

1. Persons requesting or receiving services shall be notified of their right to file grievances or request investigations according to the requirements in ADHS/DBHS Policy GA 3.5, Notice Requirements.
2. ADHS/DBHS, T/RBHAs, and the Arizona State Hospital, shall respond to grievances and requests for investigations in accordance with the timelines contained in 9 A.A.C. 21, Article 4.
3. Computation of Time – In computing any period of time prescribed or allowed by this policy, the period begins the day after the act, event or decision occurs and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday. If the period of time is not designated as calendar days and is less than 11 days, then intermediate Saturdays, Sundays and legal holidays must not be included in the computation.

POLICY GA 3.1 CONDUCT OF INVESTIGATIONS CONCERNING PERSONS WITH
SERIOUS MENTAL ILLNESS

4. The ADHS/DBHS, RBHA, or the Arizona State Hospital shall establish a unique ADHS/DBHS Docket Number for each Grievance or Request for Investigation filed. The Docket Number shall be established as follows:
 - a. The letter "B" for those issues investigated by the ADHS/DBHS;
 - b. The RBHA letter code (see Attachment A);
 - c. The date of receipt of the Grievance or Request for Investigation using the MMDDYY format;
 - d. The letter code "S" designating that the person is enrolled in services for the Seriously Mentally Ill;
 - e. A four-digit sequential number.

G. Agency Responsible for Resolving Grievances and Requests for Investigation

1. ADHS/DBHS, the Arizona State Hospital and T/RBHAs shall review incident reports submitted as required in ADHS/DBHS Policy QM 2.5, Reports of Incidents, Accidents, and Deaths to determine if a grievance issue or condition requiring investigation exists. Incidents in which a person receiving services reports that their rights have been violated or that they have been physically or sexually abused shall be treated as grievances.
2. Grievances involving an alleged rights violation, or a request for investigation involving an allegation that a condition requiring investigation exists, which occurred in an agency operated by the RBHA or one of its subcontracted providers, or the Arizona State Hospital, and which does not involve a client death or an allegation of physical or sexual abuse, shall be filed with and investigated by the RBHA, or the Arizona State Hospital. Such grievances or requests for investigation that occurred in an agency operated by a TRBHA or its subcontracted providers shall be filed with and investigated by the ADHS/DBHS.
3. Grievances or requests for investigation involving physical or sexual abuse or death that occurred in the Arizona State Hospital, an agency which is operated by a T/RBHA or one of its subcontracted providers or as a result of an action of a person employed by a T/RBHA or one of its subcontracted providers shall be addressed to the ADHS/DBHS and investigated by the ADHS/DBHS.

POLICY GA 3.1 CONDUCT OF INVESTIGATIONS CONCERNING PERSONS WITH
SERIOUS MENTAL ILLNESS

4. Grievances involving a rights violation, or a request for investigation involving an allegation that a condition requiring investigation exists and which occurred in an agency that is not the Arizona State Hospital, a RBHA, TRBHA or their subcontracted providers shall be addressed to the appropriate regulatory division or agency.
5. The ADHS/DBHS Deputy Director, the RBHA Director, TRBHA Director, or the Chief Executive Officer of the Arizona State Hospital, before whom a grievance or request for investigation is pending, shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, complainant or witness.

H. Grievance/Request for Investigation Process

1. Timeliness and Method For Filing Grievances
 - a. Grievances or a request for investigation must be submitted to ADHS/DBHS, The Arizona State Hospital, the RBHA, orally or in writing, no later than 12 months from the date the alleged violation or condition requiring investigation occurred. This timeframe may be extended for good cause as determined by the ADHS/DBHS Deputy Director, the RBHA Director or CEO of the Arizona State Hospital, before whom the grievance or request for investigation is pending.
 - b. Any employee or contracted staff of ADHS/DBHS, The Arizona State Hospital, a T/RBHA or its subcontracted provider, shall, upon request, assist a person receiving services, or their legal guardian, in making an oral or written grievance or request for investigation or direct the person to an available supervisory or managerial staff who shall assist the person to file a grievance or request for investigation.
 - c. All oral grievances and requests for investigation must be accurately reduced to writing by the ADHS/DBHS, the Arizona State Hospital, T/RBHA or its subcontracted provider, that receives the grievance or request, on the ADHS/DBHS Appeal or SMI Grievance Form (Attachment B).
 - d. The Arizona State Hospital T/RBHA shall submit the complaint form and all subsequent correspondence concerning the case to the ADHS/DBHS Office of Grievance and Appeals, including:
 - (1) Whether the person who is the subject of the grievance or request for investigation is a person who needs special assistance, and

(2) A report of any corrective action taken as a result of the findings of the investigation.

- a. Summary Disposition – Within seven days of receiving a grievance or request for investigation, the ADHS/DBHS, the Arizona State Hospital, or RBHA Director or designee, may summarily dispose of a grievance or request for investigation when:

- (1) The alleged violation occurred more than one year prior to the date of request.
- (2) The grievance request is primarily directed to the level or type of mental health treatment provided and can be fairly and efficiently addressed through the service planning or appeal process as described in 9 A.A.C. 21, Articles 3 and 4.

b. Disposition without investigation - Within seven days of receiving a grievance or request for investigation, the ADHS/DBHS, the Arizona State Hospital, or RBHA Director or designee, may resolve the matter without conducting an investigation when:

- (1) There is no dispute of the facts alleged in the grievance or request for investigation;
- (2) The allegation is frivolous, meaning that it:
 - (a) Involves an issue that is not within the scope of Title 9, Chapter 21;
 - (b) Could not possibly have occurred as alleged; or
 - (c) Is substantially similar to conduct alleged in two previous grievances or requests for investigation within the past year and which have been determined to be unsubstantiated.; or
 - (d) Within 7 days of the receipt of the grievance or request for investigation, the person filing the grievance or requesting the investigation agrees that the matter can be resolved fairly and efficiently without formal investigation.

- c. Preliminary Disposition Response – Within seven days of a grievance or request for investigation, the ADHS/DBHS, the Arizona State Hospital, or RBHA Director or designee, shall prepare a written dated decision which shall explain the essential facts as to why the matter may be appropriately resolved without investigation, and the resolution. The written decision shall contain a notice of appeal rights, and information to request assistance from the ADHS/DBHS Office of Human Rights and the State Protection and Advocacy System. Copies of the decision shall be sent to the person filing the grievance or request for investigation and to the ADHS/DBHS Office of Human Rights for persons who need special assistance.

3. Conducting Investigations of Grievances – ADHS/DBHS, the Arizona State Hospital, and the RBHAs shall conduct the investigation pursuant to A.A.C. R9-21-406.

- a. If an extension of a time frame contained in A.A.C. R9-21-406 is needed, it may be requested pursuant to A.A.C. R9-21-410.B. Specifically:
 - (1) A request for an extension made by a RBHA appointed investigator shall be addressed to the RBHA Director or designee.
 - (2) A request for an extension made by an ADHS/DBHS appointed investigator shall be addressed to the ADHS Director or designee.
- b. For grievance investigations into allegation of rights violations, or physical or sexual abuse, the investigator shall:
 - (1) Interview the person who filed the grievance and the person receiving services who is identified as the subject of the violation or abuse (if different) prior to interviewing the person alleged to be the perpetrator of the rights violation, or physical or sexual abuse.
 - (2) If the person who is the subject of the investigation needs special assistance, the investigator shall contact the person's advocate, or if no advocate is assigned, the ADHS/DBHS Office of Human Rights, and request that an advocate be present to assist the person during the interview and any other part of the investigation process.
 - (3) Request assistance from the ADHS/DBHS Office of Human Rights if the person identified as the subject needs assistance to participate in the interview and any other part of the investigation process.

POLICY	GA 3.1 CONDUCT OF INVESTIGATIONS CONCERNING PERSONS WITH SERIOUS MENTAL ILLNESS
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- (4) Prepare a written report that contains at a minimum:
 - (a) A summary for each individual interviewed of information provided by the individual during the interview conducted;
 - (b) A summary of relevant information found in documents reviewed;
 - (c) A summary of any other activities conducted as a part of the investigation;
 - (d) A description of any issues identified during the course of the investigation that, while not related to the allegation or condition under investigation, constitutes a rights violation or condition requiring investigation;
 - (e) A conclusion, based on the facts obtained in the investigation, that the alleged violation or abuse is either substantiated or not substantiated based on a preponderance of the evidence. The conclusion must describe those findings and/or factors that led to this determination; and
 - (f) Recommended actions or a recommendation for required corrective action, if indicated.
- c. Within five days of receipt of the investigator's report, the ADHS/DBHS Deputy Director, RBHA Director, or Chief Executive Officer of the Arizona State Hospital shall review the investigation case record, and the report, and issue a written, dated decision which shall either:
 - (1) Accept the report and state a summary of findings and conclusions and any action or corrective action required of the Arizona State Hospital, RBHA or TRBHA Director, and send copies of the decision, subject to confidentiality requirements in ADHS/DBHS Policy CO 1.4, Confidentiality to the investigator, the Arizona State Hospital, RBHA or TRBHA Director, the person who filed the grievance, the person receiving services identified as the subject of the violation or abuse (if different), and the ADHS/DBHS Office of Human Rights for persons deemed in need of special assistance. The decision sent to the grievant and the person who is the subject of the grievance (if different) shall include a notice of the right to request an administrative appeal of the decision within 30 days from the date of receipt of the decision. The decision must be sent to the grievant by certified mail or be hand delivered.

- (2) Reject the report for insufficiency of facts and return the matter for further investigation. The investigator must complete the further investigation and deliver a revised report to the ADHS/DBHS Deputy Director, RBHA Director, or Chief Executive Officer of the Arizona State Hospital within 10 days.
- d. The ADHS/DBHS Deputy Director, RBHA Director, or Chief Executive Officer of the Arizona State Hospital may identify actions to be taken, as indicated in (c)(1) above, which may include:
 - (1) Identifying training or supervision for or disciplinary action against an individual found to be responsible for a rights violation or condition requiring investigation identified during the course of investigation of a grievance or request for investigation;
 - (2) Developing or modifying a mental health agency's practices or protocols;
 - (3) Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or
 - (4) Imposing sanctions, which may include monetary penalties, according to the terms of a contract, if applicable.
- e. In the event an administrative appeal is filed, the RBHA, or the Arizona State Hospital, shall forward the full investigation case record, which includes all elements in A.A.C. R9-21-409(D)(1), to the ADHS/DBHS Deputy Director through the ADHS/DBHS Office of Grievance and Appeals. The RBHA or Arizona State Hospital shall prepare and send with the investigation case record, a memo in which the RBHA states:
 - (1) Any objections the Arizona State Hospital or the RBHA has to the timeliness of the administrative appeal,
 - (2) The Arizona State Hospital's, or the RBHA's response to any information provided in the administrative appeal that was not addressed in the investigation report, and
 - (3) The Arizona State Hospital's or the RBHA's understanding of the basis for the administrative appeal.
- f. Within 15 days of the filing of the administrative appeal, the ADHS/DBHS Deputy

4. Conducting Investigations of Conditions Requiring Investigation – The investigation shall be conducted in the same manner described above in section G.3. of this policy.

- Arizona Department of Health Services Division of Behavioral Health Services
Page 10 of 14

- (2) A description of the grievance or request for investigation issue;
- (3) The date of the filing of grievance;
- (4) The date of the initial decision or appointment of the investigator;
- (5) The date of the filing of the investigator's final report;
- (6) The dates of all subsequent decisions, appeals or other relevant events;
- (7) A description of the final decision and any actions taken by the ADHS/DBHS Deputy Director, the RBHA Director, or the Chief Executive Officer of the Arizona State Hospital.

- a. Pursuant to the applicable statutes and ADHS/DBHS Policy CO 1.4, Confidentiality, the Arizona State Hospital, RBHA or TRBHA shall maintain confidentiality and privacy of grievance matters and records at all times.
- b. Notice shall be given to a public official, law enforcement officer, or other person, as required by law, that an incident involving death, abuse, neglect, or threat to a person receiving services has occurred, or that a dangerous condition or event exists.
- c. The Arizona State Hospital, RBHA or TRBHA shall notify the Deputy Director of ADHS/DBHS when:
 - (1) A person receiving services files a complaint with law enforcement alleging criminal conduct against an employee;
 - (2) An employee or contracted staff files a complaint with law enforcement alleging criminal conduct against a person receiving services;
 - (3) An employee, contracted staff, or person receiving services is charged or convicted of a crime related to a rights violation, physical or sexual abuse, or death of a person receiving services.

Arizona Department of Health Services Division of Behavioral Health Services

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Division of Behavioral Health Services

ATTACHMENT A

RBHA Codes for Docket Numbers

V - Value Options

X – CPSA

N – NARBHA

P – PGBHA

Y – EXCEL

T – Tribal RBHA

B – ADHS/DBHS

Attachment B

ADHS/DBHS APPEAL OR SMI GRIEVANCE FORM

Client/Applicant Information:

Name: _____
(Last, First, M.I.)

Address: _____
Street City State Zip Code

Phone: (____) _____ Date of Birth: _____

Information about the person filing (if different than above):

Name: _____
(Last, First, M.I.)

Address: _____
Street City State Zip Code

Phone: (____) _____

Relationship to the Client/Applicant (i.e. Provider, Parent or Guardian): _____

Description of Appeal or Grievance: [Please include dates, names, locations, also any other attempts to resolve the problem, attaching additional pages as necessary.]

What solution do you want? _____

Continuation of Services:

For clients with a serious mental illness, your services under appeal will be continued during the appeal process, unless doing so poses a serious threat of harm to you or others.

For appeals relating to Title XIX or XXI services, please check *one* of the following:

- ☐ I am requesting that the services I am appealing be continued during the appeal process. I understand that if I lose my appeal, I may be required to pay for the cost of the services that were continued during the appeal process.
- ☐ I do not want the services I am appealing to be continued during the appeal process.

Client Signature: _____ Date: _____